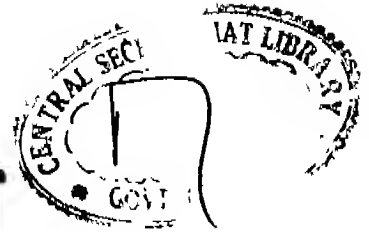




भारत का राजपत्र The Gazette of India



असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 8th December, 1978:—

BILL No. 130 OF 1978

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India, as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1978. Short title and commencement.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In the Constitution, article 14 shall be omitted and shall be deemed always to have been omitted with effect from the twenty-sixth January, 1950. Omission of article 14.

STATEMENT OF OBJECTS AND REASONS

There is inequality everywhere despite this mandatory and basic provision in article 14 of the Constitution. There is in equality in most of the laws of the land and there is nothing surprising when there is more inequality in their execution.

A perusal of the following few Acts will show that no equality is maintained and no rational policy is followed to maintain equality provision of law—

Code of Civil Procedure, 1908.

Code of Criminal Procedure, 1973.

Central Excise & Salt Act, 1944.

Customs Act, 1962.

Indian Stamp Act, 1899.

It is an established principle and held from time to time by the superior courts including the Allahabad High Court that parties in the court are equal, but in actual practice this is not followed.

There is no dearth of provisions of inequality in different Acts, Rules and Regulations which have made the equality provision in the Constitution as null and void. It is the general impression of the authorities that equality is not possible and it holds good in theory and not in practice.

Keeping all these facts and circumstances in view, it is necessary that article 14 of the Constitution, which is the cause and source of day-to-day trouble, should be omitted so that there may not be any cause complaint. This equality clause is the back bone of the Constitution, but as it is not given effect, it is useless.

All such and similar matters are worthwhile to be considered and implemented without any delay otherwise it is safe to delete article 14 of the Constitution.

Hence the Bill.

NEW DELHI;

MANOHAR LAL

The 25th April, 1978.

BILL No. 169 OF 1978

A Bill further to amend the Code of Criminal Procedure, 1973 and to repeal the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

1. This Act may be called the Code of Criminal Procedure (Amend- Short
ment) and the repeal of the Conservation of Foreign Exchange and title.
Prevention of Smuggling Activities Act, 1978.

2 of 1974.

2. In the Code of Criminal Procedure, 1973, in section 167, after sub-
section (6), the following sub-section shall be added, namely:—

Amend-
ment of
section
167.

“(7) Notwithstanding anything contained in any part of this
Code, where a person is arrested and detained in custody on reasonable

suspicion of the Commission of an offence of smuggling goods or abetting the smuggling of goods or engaging in transporting or concealing or keeping smuggled goods or dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods or harbouring persons engaged in smuggled goods or in abetting the smuggling of goods, punishable under the Customs Act, 1962 or of any offence under the Foreign Exchange Regulation Act, 1973 which prejudicially affects the conservation or augmentation of foreign exchange, and the Central Government or the State Government is of the opinion that the said person should be dealt with under this sub-section, the magistrate before whom such person is produced under sub-section (1) shall remand the said person to custody for such period as the said government requires, not exceeding three months:

52 of 1962,
46 of 1973.

Provided that the said period of three months may be extended for such period not exceeding three months as the said government might require if the magistrate is of the opinion that the accusation against the said person is well founded.”.

Repeal
of Act
No. 52
of 1974.

3. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, is hereby repealed.

STATEMENT OF OBJECTS AND REASONS

Our commitment to the Rule of Law requires that preventive detention be totally outlawed except during the period of operation of proclamation of emergency under the Constitution of India. This is in accord with the resolution of the International Commission of Jurists at the Bangkok Conference to the following effect:

“Save during a period of public emergency threatening the life of the nation, no person of sound mind shall be deprived of his liberty except upon a charge of a specific offence, and preventive detention without trial shall be contrary to the rule of law.”

2. The Constitution is being amended to take away this power of preventive detention which was so grossly abused during the last emergency. However, there is a strong body of opinion which suggests the retention of preventive detention in some form for dealing with persons who since 1974 are being dealt with under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA). Even this law is capable of being misused against innocent persons including political opponents. On principle, no civilized society should tolerate even this law. It is well known that evil laws which have ostensibly beneficial purpose are extremely dangerous because they have a tendency to acclimatise society to the existence of such evil laws. It is possible to deal with these anti-social elements by a simple amendment of the Code of Criminal Procedure.

The proposed new sub-section makes it possible for the State Government or the Central Government to have in custody for the purposes of investigation any person suspected of the activities dealt with by the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. If at the end of three months the Government is unable to satisfy a magistrate that the accusation is well founded, the person is entitled to be released. If, however, the accusation is well founded, the appropriate Government will have adequate time to complete its investigation during the next three months. The proposed sub-section provides a powerful weapon to deal with anti-social elements without militating against the concept of Rule of Law.

RAM JETHMALANI.

NEW DELHI;

The 13th July, 1978.

BILL NO. 168 OF 1978

A Bill to provide for adequate representation of Scheduled Castes and Scheduled Tribes in posts and services under the Government of India.

BE it enacted by Parliament in the Twenty-ninth year of the Republic of India as follows:—

Short
title,
extent
and com-
mence-
ment.

1. (1) This Act may be called the Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1978.

(2). It shall extend to the whole of India including the State of Jammu & Kashmir.

(3). It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in that behalf.

Defini-
tions.

2. In this Act, unless the context otherwise requires,—

(a) “appointing authority in relation to a service or post in an establishment” means the authority empowered to make appointment to such service or post;

(b) "establishment" means any office of the Central Government, public sector undertaking or statutory authority constituted under any Central Act for the time being in force or a Corporation in which not less than 51 per cent. of the paid up share capital is held up by the Central Government and includes Universities and colleges affiliated to universities, primary and secondary schools and other educational institutions which are owned or aided by the Central Government;

(c) "establishment in public sector" means any industry, trade, business or occupation owned, controlled or managed by—

(i) Central Government or any Department of the Central Government;

1 of 1956.

(ii) any Government company as defined in section 617 of the Companies Act, 1956 or a corporation established by or under a Central Act;

(d) "prescribed" means prescribed by rules made under the Act;

(e) "recruitment year" means the financial year during which a recruitment is actually made;

(f) "reservation" means reservation of vacancies in posts and services for the Scheduled Castes and Scheduled Tribes;

(g) "Scheduled Castes" mean the Scheduled Castes specified in the Constitution (Scheduled Castes) Order, 1950 made under Article 341 of the Constitution of India as amended from time to time;

(h) "Scheduled Tribes" mean the Scheduled Tribes specified in the Constitution (Scheduled Tribes) Order, 1950 made under Article 342 of the Constitution of India as amended from time to time;

(i) "select list" means the list of candidates arranged in order of precedence prepared according to the rules and orders issued by the Central Government in that behalf and adopted by the competent authority for making appointments in respect of initial recruitment and promotion.

3. This Act shall apply to all appointments to the posts and services under the Central Government establishments including those in public sector and; the statutory authorities, including universities and colleges affiliated thereto and other educational institutions owned or aided by Central Government.

Applica-
tion of
the Act.

4. (1) Except as otherwise provided in this Act, the vacancies reserved for the Scheduled Castes and the Scheduled Tribes shall not be filled up by candidates not belonging to the Scheduled Castes and Scheduled Tribes.

Determi-
nation
of the
percent-
age to be
reserved.

(2) The reservation of vacancies in posts and services shall be at such percentage of the total number of vacancies as the Central Government may, from time to time, by order published in the official gazette determines:

Provided that in the case of initial recruitment, the percentage so determined shall, in no case be less than the percentage of the persons belonging to the Scheduled Castes or the Scheduled Tribes, as the case may be, in the total population as recorded in the latest census.

Prescription of rosters for vacancies.

5. (1) The Central Government shall prescribe model rosters indicating the number of vacancies to be reserved for the Scheduled Castes and the Scheduled Tribes and the number to be left unreserved.

(2) The appointing authorities shall maintain rosters in the prescribed form.

(3) The rosters shall be consulted for ascertaining the number of reserved vacancies.

Exchange of reservation between communities.

6. The reserved vacancies in appointments shall be exchanged between the Scheduled Castes and the Scheduled Tribes in the event of nonavailability of candidates from the respective categories, but the vacancies reserved for a particular category shall continue to be reserved for that category only for two recruitment years, and, if candidates are not available for appointment in particular reserved vacancies in the third year, the vacancy so filled by exchange shall be treated as reserved for the candidates of that particular category who are actually appointed.

De-reservation of vacancies.

7. If, in any recruitment year, the number of candidates either from the Scheduled Castes or the Scheduled Tribes is less than the number of vacancies reserved for them even after exchange of reservation between the Scheduled Castes and the Scheduled Tribes, the remaining vacancies may be advertised exclusively for Scheduled Castes and/or Scheduled Tribes to make special recruitment for them. If still the candidates from the Scheduled Castes and the Scheduled Tribes are not available, the reserved posts may be filled up by general candidates, after temporarily de-reserving the vacancies in the prescribed manner. The vacancies so de-reserved may be carried forward to subsequent five years of recruitment as prescribed for particular category of posts.

Special arrangements for importing technical training.

8. (1) If, no suitable Scheduled Castes and Scheduled Tribes candidates are available for the posts and services reserved for them, even after following the aforesaid procedure, the concerned Ministry/Department of Government of India, Public Corporation etc. shall communicate the number and qualifications of such posts to the Ministry as may be prescribed under the rules, and it shall be the duty of the said Ministry to select the appropriate number of Scheduled Castes and/or Scheduled Tribes candidates for whom the posts and services were initially reserved, and to train them at their own expense at the appropriate institutions.

(2) On satisfactory completion of such training, such candidates shall be appointed to the reserved posts.

(3) The services of the general candidates, if any, who might have been appointed, on *ad hoc* basis, against the reserved vacancies, shall stand terminated, as and when a Scheduled Caste or Scheduled Tribe candidate, as the case may be, is appointed and joins the concerned post.

9. For initial appointment of the candidates from the Scheduled Castes and the Scheduled Tribes—

(a) The upper age limit prescribed for recruitment shall be increased by five years;

(b) fees prescribed for admission into any competitive examination or interview for recruitment shall be reduced to one-fourth;

(c) the Scheduled Caste and the Scheduled Tribe candidates shall be paid travelling allowance to attend competitive examination or interview by the Union Public Service Commission, staff Selection Commission or any other recruitment agency, office or body, at such rate as may be prescribed.

Relaxation of age, fee and payment of travelling allowance.

10. (1) For recruitment through Employment Exchange in the requisition sent to the Exchange, the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes shall be specified against the total number of vacancies.

(2) For recruitment made through the Union Public Service Commission or any Selection Board, agency or office, on the basis of competitive examination or interview, the advertisement shall specify the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes against the total number of vacancies reserved.

(3) In the absence of wider choice and where the number of the Scheduled Caste and Scheduled Tribe candidates is either equal to or less than the number of vacancies, they shall be considered suitable and recruited to the extent against those vacancies if they possess the minimum qualifications required for the posts or services:

Process of selection and relaxation of qualifications.

Provided that the qualifying marks, in all the recruitment examinations, for the Scheduled Caste and the Scheduled Tribe candidates in the aggregate may be relaxed by 10 per cent. by the Central Government or the Union Public Service Commission:

Provided further that in case adequate number of the Scheduled Caste or the Scheduled Tribe candidates do not qualify a prescribed test, such of the candidates who have appeared in the test and who fulfil the prescribed educational qualification, but have failed in the prescribed test shall be arranged in the order of their merit and recruited on probation against such or remaining vacancies subject to passing the prescribed in-service training course within the period of probation.

(4) If the required number of Scheduled Castes and Scheduled Tribes candidates are not available for filling up the reserved vacancies, a fresh recruitment shall be made only from candidates belonging to the Scheduled Castes or the Scheduled Tribes, as the case may be, for filling up the remaining reserved vacancies.

(5) If, after holding the special recruitment, the required number of candidates belonging to Scheduled Castes or the Scheduled Tribes are still not available or, if, the number of such candidates is less than the number of reserved vacancies, the vacancies which remain unfilled shall be temporarily filled by general candidates in accordance with procedure laid down in sections 6 and 7.

Promotion
on the
basis of
seniority.

11. (1) Where promotion is to be made on the basis of seniority subject to fitness, the senior most Scheduled Castes and Scheduled Tribes officials shall be promoted to the next higher post or grade against reserved vacancies provided they possess the minimum qualifications and experience at relaxed standard required for such promotion.

(2) The number of reserved vacancies shall be determined on the basis of the reserved points shown in the roster maintained under section 5.

Promo-
tion on
select-
tion.

12. Where promotion is to be made on the basis of selection, the procedure for filling up of the reserved vacancies shall be such, as may be prescribed, and the number of reserved vacancies shall be determined on the basis of the reserved points shown in the roster maintained under section 5. The zone of the consideration shall be six times the number of posts or vacancies.

Selec-
tion
from
different
services.

13. Where selection is to be made from different services the recruiting or appointing authority shall select Scheduled Castes and Scheduled Tribes candidates to the extent of the reserved quota, provided such candidates satisfy the minimum conditions of qualifications and experience laid down in respect of the posts concerned.

Reserva-
tion in
confirma-
tion.

14. In posts/services filled by direct recruitment or promotion, reservation is to be made for the Scheduled Castes and the Scheduled Tribes at the time of confirmation at the prescribed ratio.

Annual
report of
appoint-
ments.

15. (1) Every appointing authority shall furnish to the Government in the prescribed manner an annual report on appointments by the end of the month of July of the succeeding financial year and maintain such other records as may be prescribed.

(2) Any officer authorised by the Central Government in that behalf may inspect any record or documents and require the appointing authority to produce the roster and other records relating to appointments made by him which are maintained in his office.

(3) It shall be the duty of the appointing authority to produce such records and documents, furnish such information and afford all such assistance and facilities as may be necessary for the aforesaid purpose.

Responsi-
bility of
Heads of
Depart-
ments.

16. In each Ministry, Department or establishment, an officer of senior rank, authorised by the Government or chief executive authority of an autonomous body etc. in that behalf shall act as liaison officer in respect of the matters provided in this Act. He shall be specially responsible for—

(a) ensuring proper implementation of the provisions of this Act and the rules made thereunder;

(b) ensuring compliance by the subordinate authorities;

(c) ensuring timely submission of returns;

(d) conducting annual inspection of roster and such other records;

(e) ensuring necessary assistance to the Commission for Scheduled Castes and Scheduled Tribes, Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes, any other Agency

or statutory body appointed by the Government to investigate the complaints received from organisations or individuals belonging to the Scheduled Castes and Scheduled Tribes.

17. (1) There shall be a Standing Committee consisting of the following members, namely:—

Standing
Com-
mittee.

(a) Prime Minister—Chairman

(b) Minister of Home Affairs—Member

(c) Three Members of Parliament belonging to Scheduled Castes/Tribes to be nominated by the Government—Member;

(d) Minister-in-charge for the Welfare of Scheduled Castes/Tribes; and—Member

(e) Cabinet Secretary—Secretary.

18. (1) The Standing Committee appointed under section 16 shall perform the following functions, namely:—

Func-
tions of
the
Standing
Com-
mittee.

(a) review of the implementation of the provisions of this Act and the rules made thereunder, twice in a financial year;

(b) suggest measures for the removal of difficulties in such implementation or for the improvement thereof; and

(c) perform such other functions as the Central Government may, from time to time, assign to the Committee.

19. The Central Government shall prepare an annual report on the working of this Act and lay it before each House of Parliament for a period of not less than fifteen days in the Budget Session of the succeeding financial year.

Annual
report
to be
laid
before
Parlia-
ment.

20. If an appointing authority makes an appointment in contravention of the provisions of this Act, he shall be punishable with fine which may extend to rupees five hundred or simple imprisonment for fifteen days or both:

Penalty.

Provided that special provisions shall be prescribed by appropriate authority when the appointing authority is other than Government, Public Corporation, Autonomous body etc.

21. No prosecution for an offence under this Act shall be instituted except by or with the sanction of the Central Government.

Cogni-
zance.

22. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may take such steps or issue such orders not inconsistent with the provisions of this Act, as appear to it to be necessary for removing the difficulty.

Removal
of diffi-
culties.

23. Notwithstanding anything contained in the Central Services (Conduct) Rules, any member of any Scheduled Caste or Scheduled Tribe who is adversely affected on account of the non-compliance with the provisions of this Act or the rules made thereunder by any appointing authority, may bring the fact to the notice of the Central Government or the Commission for Scheduled Castes and Tribes, and upon application made by him the Central Government or the Commission for Scheduled Castes and Tribes may call for such records or take such action thereon as it may think fit.

Inspection
of
Records.

Power
to make
rules.

24. (1) The Central Government may, after previous publication in the Official Gazette, make rules for carrying out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers they may make rules in respect of all matters expressly required or allowed by this Act to be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Overrid-
ing
effect
of the
Act.

25. The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law or rule, order or resolution made by the Central Government.

STATEMENT OF OBJECTS AND REASONS

The provisions of reservation in posts and services having not been codified, there has been apathy and un-willingness on the part of most of the officers in implementation thereof. As a result of this in none of the Ministries/Departments, Public Undertakings, etc., the quota of Scheduled Castes and Scheduled Tribes is full even after 31 years of independence and 28 years of adoption of the Constitution.

The Penalty clause in the Bill will serve as deterrent to the wilful defaulters in implementation of provisions contained in Article 335 of the Constitution.

The Bill is intended to ensure implementation of the provisions contained in the Constitution.

NEW DELHI;

The 3rd August, 1978.

SURAJ BHAN.

FINANCIAL MEMORANDUM

Clause 8(1) of the Bill provides for special arrangement for imparting Technical Training. Though the exact number of such training centres cannot be assessed at this stage, yet it is estimated a recurring expenditure of Rs. 10,00,000 is likely to be involved.

No non-recurring expenditure is likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 24 of the Bill empowers the Central Government to make rules to carry out all or any of the purposes of this Act.

These powers are within the ambit of the delegated legislation.

BILL No. 165 OF 1978

A Bill to provide for the abolition of prostitution.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

Short
title,
extent and
commen-
cement.

1. (1) This Act may be called the Abolition of Prostitution Act, 1978.
- (2) It extends to the whole of India
- (3) It shall come into force at once.

Prohibi-
tion on
profession
of prosti-
tution.

2. Notwithstanding anything contained in the Indian Penal Code or any other law for the time being in force, no person shall be allowed to engage in the profession of prostitution in any form, in soliciting for prostitution or in allowing any house or part thereof to be used for prostitution.

45 of 1860.

Punish-
ment,

3. Notwithstanding anything contained in the Suppression of Immoral Traffic in Women and Girls Act, 1956, or any other law for the time being in force, any person connected in any way with the business of prostitution shall be punishable with rigorous imprisonment which may extend to five years.

Compen-
sation
for reha-
bilitation,

4. Any person, who gives a declaration of being a prostitute within three months of this Act coming into force, shall be entitled to a compensation of rupees one thousand only for the purpose of rehabilitation, provided that the claim can be sustained.

STATEMENT OF OBJECTS AND REASONS

Prostitution is known to be the oldest profession in the world. But in recent years with the advancement of industrialisation in the country, this profession has expanded in the country. A new class of prostitutes named 'Call Girls' has sprung up. Girls from good families are going in for this profession for the sake of money. A large number of young men, including college students, are going to prostitutes as brought out by a recent survey of the Indian Market Research Bureau. This has led to rampant spread of venereal diseases and total breakdown of morals of the younger generation.

Prostitution is a curse of industrial society. It can only exist in a permissive capitalist society. A country like India, which aspires to become socialist, cannot afford the luxury of allowing prostitution. No known form of prostitution exists in the socialist countries. China, whose ports were known for prostitutes, has totally banished prostitution. The Suppression of Immoral Traffic in Women and Girls Act, 1956 has proved to be totally inadequate for this purpose. It has become a tool in the hands of dishonest policemen. It is necessary for the Government to take up the rehabilitation of these prostitutes also.

Hence this Bill.

SAUGATA ROY,

NEW DELHI;

The 2nd November, 1978.

FINANCIAL MEMORANDUM

Assuming that there are two hundred thousand prostitutes in the country, a non-recurring expenditure of rupees twenty crores will be incurred from the Consolidated Fund of India in paying them compensation (Clause 4).

No recurring expenditure is likely to be involved.

BILL NO. 166 OF 1978

A Bill to provide for the constitution of a permanent Boundary Commission and resolve interState boundary disputes between States and States and between Union territories and States.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Boundary Commission Act, 1978.

(2) It shall come into force at once.

2. The President shall appoint a Boundary Commission headed by a Judge of the Supreme Court and consisting of two other members who shall not be holding office under the Union or State Government.

3. The Commission shall resolve every boundary dispute taking into consideration such factors as linguistic composition of the areas concerned, geographical contiguity and such other factors as it may deem to be relevant in the circumstances of a particular case.

4. The decisions of the Commission shall be final and binding on all the parties to a dispute.

Short
title and
commen-
cement.

Appoint-
ment and
composi-
tion of the
commis-
sion.

Criteria
for re-
solving
boundary
disputes.

Findings
of the
Commis-
sion.

STATEMENT OF OBJECTS AND REASONS

There is a grave threat to the nation's unity from increasing bitterness arising out of boundary disputes between States. These disputes must and can be resolved expeditiously in the interest of the nation's unity and of strengthening our people's faith in the democratic processes.

Such disputes have defied solution and remained unsolved mainly because in such matters there cannot be absolute principles of universal application. Hence the present Bill to provide for a Commission whose decision in any boundary dispute shall be final and which shall have the power to decide on the basis of such criteria that it may find proper in the circumstances of each case.

EDUARDO FALEIRO.

NEW DELHI;

The 7th November, 1978.

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for the appointment of a Boundary Commission consisting of a Judge of the Supreme Court and two other members. Expenditure on this account is estimated to be roughly about 40 lakhs of rupees per annum recurring by way of salary and allowances of the Chairman and members and staff of the Commission.

A non-recurring expenditure of about Rs. 10,000 will have to be incurred for furniture and office equipment of the Commission.

BILL NO. 161 OF 1978

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

Short
title and
com-
mence-
ment.

1. (1) This Act may be called the Constitution (Amendment) Act, 1978.

(2) It shall come into force at once.

Amend-
ment of
article
101.

2. In article 101 of the Constitution, in clause (3),—

(i) in sub-clause (b), the word “or” shall be inserted at the end;

(ii) after sub-clause (b), the following sub-clause shall be inserted, namely:—

“(c) is recalled by a majority of electors of his constituency in such manner as Parliament may by law prescribe,”.

Amend-
ment of
article
190.

3. In article 190 of the Constitution, in Clause (3),—

(i) in sub-clause (b), the word “or” shall be inserted at the end;

(ii) after sub-clause (b), the following sub-clause shall be inserted, namely:—

“(c) is recalled by a majority of electors of his constituency in such manner as Parliament may by law prescribe,”.

STATEMENT OF OBJECTS AND REASONS

The Bill seeks to give the people the right to recall their representatives if they do not come up to their expectations. It emphasizes the sovereign right of the voter. The Bill also contributes a good deal to curb unprincipled defections.

Nearly 10 countries of the world have this kind of provision and there are sound reasons for also having it in our Constitution.

EDUARDO FALEIRO

NEW DELHI;

The 7th November, 1978.

BILL No. 167 OF 1978

A Bill to provide free legal services to indigent persons in certain cases.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

Short
title
and
com-
mence-
ment.

1. (1) This act may be called the Free Legal Services Act, 1978.

(2) It shall come into force at once.

Free
legal
services
when
avail-
able,

2. (1) Every person,—

(i) who is an indigent person within the meaning of Order XXXIII of the Schedule of the Code of Civil Procedure, or

(ii) who, though not an indigent person as aforesaid, does not have an annual disposable income exceeding rupees five thousand, shall be eligible for legal services under this Act without payment:

Provided that in relation to any proceedings before the Supreme Court, this sub-section shall have effect as if for the words “rupees five thousand”, the words “rupees ten thousand” were substituted.

(2) Every person who falls under one or more of the following categories shall, unless the contrary is shown, be deemed to be a person

eligible for legal services without payment under sub-section (1), namely:—

- (a) members of the Scheduled Castes and Scheduled Tribes;
- (b) landless labour;
- (c) small farmers;
- (d) rural artisans;
- (e) any person detained in jail pending trial or undergoing a sentence or otherwise;
- (f) internees in custodial homes under court orders;
- (g) women, children and parents involved in intra-family disputes which deprive them of access to their resources, thereby rendering them unable to meet the costs of legal services.

Explanation.—In this section—

(a) “disposable income” of a person shall be deemed to be his income after making—

(i) such deductions as may be prescribed by the Central Government in respect of the maintenance of dependants, interest on loans, income-tax, sur-charge on income tax, profession tax, rates, rent and other matters for which the person in question must, or reasonably may, provide; and

(ii) such further allowances as may, having regard to the profession or calling of the person, be prescribed by the Central Government;

(b) “Scheduled Castes” and “Scheduled Tribes” shall have the meanings respectively assigned to them in article 366 of the Constitution;

(c) “small farmer” shall mean a person who does not own or possess such area of agricultural land, not exceeding five hectares, as the Central Government may, by notification, specify in this behalf.

3. (1) Notwithstanding anything contained in section 2, a person who is not an indigent person and whose annual disposable income exceeds rupees five thousand but does not exceed rupees seven thousand five hundred, shall be eligible for legal services on payment of a contribution by him to the extent of fifty per cent. of the cost of such services:

Legal services on contribution of part of the cost.

Provided that in relation to any proceedings before the Supreme Court, this sub-section shall have effect as if for the words “rupees five thousand” and for the words “rupees seven thousand five hundred”, the words “rupees ten thousand” and the words “rupees fifteen thousand” were respectively substituted.

(2) The authority making available the legal service may require the contribution payable under sub-section (1) to be paid in one sum or by instalments.

Scope
of free
legal
services.

4. Free legal services, under this Act, shall be available in relation to proceedings before a court or tribunal or other judicial, quasi-judicial or administrative authority which falls within the class or category of courts or other authority notified by Central or State Government in this behalf, and such legal services shall consist of—

(a) representation by a legal practitioner—

(i) in any proceedings before such court or tribunal or other judicial or quasi-judicial authority, where such representation is not disallowed by or under the provisions of any law;

(ii) in connection with any steps preliminary or incidental to such proceedings;

(iii) in arriving at or giving effect to a settlement in any such proceedings;

(iv) for the prevention of, or bringing to an end, any such proceedings;

(b) payment of the charges of expenditure ordinarily incurred by any person ordinarily in any proceedings before such Court, tribunal or other authority;

(c) providing legal advice in relation to any class or category of proceedings or matter notified in this behalf by the Central or State Government; and

(d) such other facilities as Government may specify by rules.

Eligibi-
lity to
legal
services.

5. A person shall be given legal services under this Act, if the authority empowered to render legal services by or under the provisions of this Act is satisfied that—

(a) he is a person who is or is deemed to be eligible for legal services without payment under section 2 or is eligible for legal services on contribution of part of the cost of such services under section 3;

(b) he has reasonable grounds for taking steps to assert or dispute the claim;

(c) he has agreed to conciliation by a Conciliation Cell to be established for this purpose;

(d) having regard to the circumstances of the case, it is reasonable to give legal services to such person:

Provided that the Central Government may, if satisfied that it is necessary so to do in relation to any class or category of persons or of proceedings, by notification, exempt such class or category of persons or proceedings from satisfying the requirements specified in clause (b) or clause (d).

Power to
make
rules.

6. The Central or the State Government as the case may be shall make rules for implementing the provisions of this Act in the areas under their jurisdiction.

STATEMENT OF OBJECTS AND REASONS

Article 39A of the Constitution directs the State to secure that the operation of the legal system promotes justice on a basis of equal opportunities and in particular directs it to provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities to secure justice are not denied to any citizen by reason of economic or other disabilities.

In our country with the level of illiteracy of about 70 per cent and where an almost equal percentage of people live below the poverty line, equality before the Law and equal protection of laws which is assured to every citizen by article 14 of the Constitution and Part IV of the Constitution are, more often than not, so many words devoid of effective content for the short reason that large sections of our people are both unable to defend themselves effectively in a Court of Law or Tribunal or to afford to engage legal services as their cost is much beyond their economic possibilities. It is common knowledge that the agrarian legislation enacted in various States, Harijan welfare legislation and labour legislation in particular which were intended to improve the lot of the weaker sections of our society and to give them a new deal have, by and large, remained a dead letter in the Statute Book, honoured more by its breach than by its compliance since those who were supposed to benefit from them are too ignorant and timid to assert their rights in a Court of Law and there is none to advise them on the intricate legal questions involved. The result has been a growing frustration and disenchantment with our legal system among large segments of our people and this trend is obviously fraught with dangerous consequences to our body, social and politic.

Hence the present Bill.

EDUARDO FALEIRO

NEW DELHI;

The 7th November, 1978.

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for free legal assistance under the Act and clause 3 provides for such assistance on payment of fifty per cent. of the cost. Clause 5 provides for establishing a Conciliation Cell. This is likely to involve a recurring expenditure of about rupees ten lakhs from the Consolidated Fund of India.

No non-recurring expenditure is likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill empowers the Central and State Governments to frame rules for implementing the provisions of this Act in their respective territories. As the rules to be framed will relate to matters of detail only, the delegation of power is of a normal character.

BILL No. 159 OF 1978

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

Short
title.

1. This Act may be called the Constitution (Amendment) Act, 1978.

Amend-
ment of
article 124.

2. In article 124 of the Constitution, in Clause (2), after the first proviso, the following proviso shall be inserted, namely:—

“Provided further that the appointment of every Judge of the Supreme Court shall be subject to ratification by Parliament.”.

Amend-
ment of
article 155.

3. In article 155 of the Constitution, the following proviso shall be inserted at the end, namely:—

“Provided that the appointment of the Governor of a State shall be subject to ratification by Parliament.”.

STATEMENT OF OBJECTS AND REASONS

In a democratic framework, the function of Supreme Court Judges and Governors assumes great significance. Any arbitrariness on their part or their partisan attitude imperils our democracy as well as our Constitution, particularly in a Constitutional crisis. If the appointments of Supreme Court Judges and Governors are ratified by Parliament, this will act as a desirable pressure on the Government in the matter of their appointments. A similar Bill was introduced by Shri Madhu Dandavate, M.P. on 13th December, 1974 but it lapsed on the dissolution of the 5th Lok Sabha.

Hence this Bill.

NEW DELHI;

EDUARDO FALEIRO.

The 7th November, 1978.

AVTAR SINGH RIKHY,

Secretary.

